IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2870 of 1993

to

FIRST APPEALNo 2902 of 1993

with

FIRST APPEAL No 2871 of 1993

Except

First Appeals No.2877/93, 2881/93, 2886/93 and 2903/93 which are already disposed of.

For Approval and Signature:

Hon'ble Mr.Justice N.J.Pandya and

AND HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes @s
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2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question

of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No @@he
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5. Whether it is to be circulated to the Civil Judge? -No

UNITED INDIA INSURANCE CO.LTD.

Versus

RAMANBHAI K CHAUHAN

Appearance:

MR PV NANAVATI for the appellants
MR MUKESH R SHAH for Respondent No. 1
MRS.PUMINI SHETH FOR MR AKSHAY H MEHTA for Respondent No. 2
MR MD PANDYA for Respondent No. 3

CORAM : Mr. Justice N.J Pandya and
MR.JUSTICE A.R.DAVE

Date of decision: 16/09/96

ORAL JUDGEMENT(Per N.J.Pandya,J.)

In all 34 appeals were filed in respect of a common award that came to be passed by Motor Accident Claims Tribunal, Panchmahal at Godhra in as many matters. However, at admission stage, 4 of the appeals came to be dismissed as the amount involved therein was between Rs.2500/- to 5000/-. We are therefore, left to deal with the remaining 30 appeals which we do by this common judgment.

2. The incident leading to the aforesaid claim petitions occurred on 11th March 1987 at about 6.45 p.m. on Highway between Dahod and Godhra. A truck bearing Registration No.GRY 4024 had turned turtle at the

curvature of the highway near village Jakot. The truck was loaded with fertilizer bags. Over and above these goods, the truck was also carrying passengers, who had boarded the same with their respective goods. They had boarded the truck from Dahod.

3. As if this is not enough, at the place of the incident, there were going on by the side of the road some pedestrians. Four of these pedestrians were crushed under the fallen truck. In all there were 24 fatalities and 10 persons were injured. That is how, 34 claim petitions came to be preferred before the trial Court claiming different amounts and the trial Court by its judgment dated 15-4-1993 held the driver, owner and the Insurance Company jointly and severally liable for the different amounts that it awarded in respect of different claims.

4. Needless to say, in case of fatal accidents, it was the heirs of the respective deceased who approached the claim tribunal and in case of injured , they themselves had filed their respective petitions. A statement giving details of the claim petitions correlated to the respective first appeals also containing the details as to the amount claimed and the amount that came to be awarded is produced on record.

5. The admitted position is that the truck in question was a goods vehicle. It was, in fact, carrying fertilizer bags. The panchnama on record indicates as such and there is no controversy in this regard.There is also no controversy that the persons were travelling in the truck. The controversy is , no doubt, as to they being fare paying passengers or according to the claimants, they being persons travelling along with their goods after paying charges for carriage of goods.

6. This aspect is not required to be considered at all in respect of the pedestrians. With regard to the pedestrians the case of the Company is to the effect its liability is limited. With regard to the passengers in the truck, the case of the Company is that the carriage of the passengers being in breach of the terms and conditions of the policy, the Company is not liable at all.

7. One would have thought that so far as Gujarat is concerned, this controversy does not survive any more. The reason is two Full Bench decisions of this Court where this aspect has been elaborately considered. They are 23(1) GLR 411 Nathibai's case and 34(1) GLR 779 known

as Kamalaben's case. However, in both the cases, the persons travelling in the goods vehicle were not found to be in excess of the limit prescribed in Rule 118 of the Motor Vehicles Act, 1939 read along with the prescribed form of permit issued thereunder.

8. In first of these two decisions i.e. Nathibai's case, the learned author of the judgment Justice P.D.Desai, as he then was, has more than once referred to the limit of 7 persons prescribed in Rule 118 and had, on different occasions, in the course of the judgment stated that if the persons travelling along with the goods are within the limit prescribed in Rule 118, the Insurance Company cannot putforth a defence of breach. The limit prescribed is 7 persons.

9. The occasion before the two Full Benches of this Court arose to consider the aspect of persons travelling with the goods because the policy issued by the respective Companies in these two matters did contain a condition that there is limitation as to use of the vehicle. The limitation was connected with the terms and conditions of the permit issued under the provisions of the Motor Vehicles Act 1989, as also, the terms and conditions of the permit which a goods carriage vehicle has to have pursuant to Sec.42 of the Motor Vehicles Act 1939 read with Sec.44, 54, 55 and more particularly 56(2) with condition No.9 being emphasised upon by the Company.

10. Reference is also made to Section 59 which indicates general conditions attached to all permits as per sub-Section 3(d)(f).

11. One more dimension required to be considered in the instant case is that the aforesaid vehicle involved in the incident was said to be having national permit and the fact that it was having national permit is brought on record and is admitted by both the sides. There is a dispute between the parties as to whether the national permit so issued is on record or not? According to the appellant-Insurance Company, the national permit so issued is on record, while according to the respondents, it is not produced on record. So far as the permit pursuant to Rule 118 required to be issued by State Authorities under Sec.42 read with the remaining provisions mentioned hereinabove is concerned, one thing is certain that it is not on record at all. In this background, so far as the dispute as to permit is concerned, Exh.137 is to be looked at with the deposition of RTO Clerk at appropriate stage.

12. The controversy thus revolved around the fact that even if Rule 118 is attracted, as interpreted by the aforesaid two Full Bench Judgments and if the benefit thereof is to be given to the claimants, when they were far in excess of the limit of 7 persons thus permitted to be carried, no such benefit can be given to the claimants and instead, the trial Court ought to have held that there is a clear breach of the terms and conditions of the Policy referable to the breach of the permit itself.

13. The learned Advocate Mr.P.V.Nanavati, to his credit must be said, while appearing for the appellant-Insurance Company had taken utmost pains and had tried to cover the aforesaid controversy from as many different angles as possible.

14. He had also in mind a submission which in fact was made that the aforesaid two full bench decisions are either suffering from the vice of subsilentio or they can be found to be vulnerable on the principle of they being per incuriam. For the reasons to be stated hereafter, we do not find any of these infirmities in either of these judgments.

15. The learned Advocate for this purpose had drawn our attention to the decision given by the Apex Court and reported in AIR 1959 SC 79 It is a case dealing directly with the punishment that can be awarded for breach of the provisions of the Motor Vehicles Act 1939 which under the circumstances, would also include breach of the concerned Rule which in the instant case is Rule 118. Obviously, when the question of breach of the provisions of an Act or a Rule framed thereunder is being considered from the angle of visiting the persons responsible for the breach with penalty, the interpretation has to be in light of that fact situation.

16. Of necessity, the contract of Insurance is between the owner of the vehicle and the Insurance Company.The Insurance Company is obliged under the provisions of Motor Vehicles Act 1939 Chapter VIII to issue a policy undertaking to indemnify atleast to the extent prescribed by the Act and the indemnity is in favour of the owner but in fact, it is for the benefit of the public at large,the claim being awarded by the Tribunal in matters arising out of use of vehicle in a public place as its route for substantive law in the law of Torts and the form prescribed for the purpose is to be found in the Motor Vehicles Act Sec.110 onwards. Recognising also the fact that mere providing a special form will not lead to alleviating the position of the

public at large, compulsory insurance was thought of in form of Chapter VII and the sole purpose of introducing this element of indemnity via Insurance Company was to see that the claim having root in the Law of Torts, it is not merely a paper decree or a bond,which it would be in most of the cases, because the truck owner/driver are likely to be a man of straw rather than a man of substance.

17. It is in this background, that the Insurance Company steps in and while issuing the policy, is enjoined by the Statute to discharge this larger social obligation. This has been well brought out in the decision of the Honourable the Supreme Court reported in AIR 1987 SC 1184 (Skandia Insurance Co. Ltd. appellant vs. Kokilaben & Ots.

18. Para 13 page 1189 of the judgment brings out this purpose of incorporating the principle of compulsory insurance in the Motor Vehicles Act, 1939 beautifully. The learned Judge has categorically stated that whenever two views are possible with regard to either the breach of policy condition or permit, of the two views, if one is found to be favourable to the furtherance of the underlying principle and the beneficial policy towards the public at large that view is to be preferred.

19. The aforesaid two full Bench Decisions of this Court namely Nathibai's case and Kamalaben's case have done precisely that very job and if one might say, very admirably. The controversy, ordinarily therefore, as stated earlier, would not arise but for the fact that the persons travelling in the vehicle were in excess of the limit prescribed by Rule 118.

20. Thus, for the purpose of making out its defence of breach of terms and conditions as also, the conditions of permit, in our opinion, the various decisions relied on by L.A. Mr.Nanavati are hardly of any purpose. The learned Advocate has carried his submission to the extent of saying that because the rules framed are under an Act they are to be taken as statutory Rules and therefore, they should be given the same effect as one would give to the provisions of the Act itself. For this, the learned Advocate has relied on ;AIR 1961 SC 751 with remarks at page 761, AIR 1963 SC 274 and 1996 SC 1150.

21. No doubt, the last mentioned of the aforesaid 3 cases does have a bearing on the controversy before us. In that case, before the Honourale Supreme Court, the driver was found tobe having a learners licence and the

defence of the Company was that according to the terms of the policy, it could be made liable only if the persons driving the vehicle was ha ving a regular valid licence. Interpreting Rule 16 read with the relevant provisions of the Act, the Honourable the Supreme Court has laid down that the learners licence is no licence at all and therefore, so far as the aforesaid defence is concerned, it must be accepted because the person driving was having no licence.

22. Except for this, about the Rules being statutory, there cannot be any controversy.

23. However, it should not be lost sight of that Rules cannot bring about any change in the substantive act nor could it override the provisions of the Act itself. In this background, if Rule 118 is seen, the limit of 7 persons that could travel in case of the truck involved in the incident, is largely from the point of view of the safety of the persons so travelling. The purpose of issuing the permit is not to restrict the number of persons. The purpose of issuing the permit under Rule 118 is to see that it is issued for the purpose for which the vehicle is registered namely goods vehicle. The carrying of passengers travelling with the goods is incidental.

23. In this background, merely because more number of persons are travelling could it be said that the truck was not used for the purpose for which the permit was issued. The answer, in our opinion, has to be in the negative.

24. Almost an identical fact situation was dealt with by the Bombay High Court in a case reported in 1986 ACJ 460. 16 persons were travelling in the truck with the respective goods. The truck turned turtle and crushed two of the pedestrians. No doubt, the appeal before the Honourable Bombay High Court was in respect of the claim preferred by the heirs of the deceased pedestrians. The question of rule 118 therefore, was not directly involved. It was the Insurance Co. that had agitated the question as one of its submissions that carrying of passenger in excess of the limit prescribed by Rule 118 would amount to a breach of the terms of the policy condition because it is in violation of the purpose for which the permit was issued. Justice B.P.Savant, speaking for the Bench has in categorical terms held that violation of a Rule like 118 could not be construed as changing the purpose for which the vehicle was used at the relevant time. The purpose of goods vehicle is to

carry goods and that is the purpose for which the permit is issued. Carrying of passenger in excess of the limit would not change the purpose. This discussion is to be found in paragraphs 7 & 8 of the judgement at plages 462 and 463. Noting that the permit is for carrying goods, the carrying of persons is not prohibited absolutely. Carrying persons in excess of the limit would be breach of the condition of the permit issued for plying the vehicle. Noting that the vehicle was however being used essentially for carrying the goods, it cannot be said that the vehicle was not being used for the purpose for which the permit was issued. Thereafter, the learned Judges have expressed themselves to the effect that a breach of the condition of the permit is not the same thing as a breach of the purpose for which it is issued. Contravention of one part of a condition of the permit is not a contravention for the purpose for which the permit is issued. In our opinion, this would answer the contention of the learned Advocate Shri Nanavati. In any case, we are of that very opinion and we wholeheartedly agree with the opinion expressed by the learned Judges of the Bombay High Court.

25. Once it is found that by committing breach of one of the conditions of the terms of the permit, the purpose for which it is issued is not given away, or it hasnot exhausted itself, after looking to the policy unless it is found that the defence taken thereunder is available to the Company, its contentions will have to be rejected. Before doing that, we will have to deal with the remaining contentions of learned Advocate Mr.Nanavati. He had submitted that ratio of the judgment should be read in the background of the case and for which purpose, he was relying on AIR 1987 SC 1073. We wholeheartedly agree with the principles laid down in this decision and keeping that in mind only we have applied the various cases cited at the bar by the respective sides.

26. We are conscious of the fact that the aforesaid decisions are cited with regard to Nathibai's case and Kamalaben's case as well as the aforesaid Bombay decision reported in 1986 ACJ 460. In para 5 of that Bombay Judgment, the learned Judges have observed that the case is confined to the controversy in connection with the two pedestrians. However, while noting the contention in para 7 of the judgment as summarised above, the contention with reference to Rule 118 as raised by the Company has been dealt with in para 8 in the manner stated above. The judgment in our opinion, therefore, thus lays down a ratio with which we are in agreement.

27. So far as the judgments in the cases of Nathibai and Kamalaben are concerned, they will be dealt with separately hereafter.

28. The learned Advocate had cited 3 judgments--AIR 1984 SC 84 and 664, AIR 1970 SC 694 and AIR 1971 SC 1041 in support of his contention that documents should be read as a whole. We entirely agree with the learned Advocate and also note the fact that this is in connection with the document Exh.128 said to be a national permit as also the Insurance Policy Exh.28.

29. The learned Advocate had submitted that statutory provisions have to be given effect to as the language would dictate and this effect has to be given whether the Court likes it or not. For this purpose, he had relied on AIR 1966 SC 529. After making this submission supported by the aforesaid two decisions, the learned Advocate took us to the various provisions of the Motor Vehicles Act, 1939 with regard to the permit. Some of these provisions have already been noted by us. For the sake of appreciating the submission we will be repeating them along with others.

30. These provisions apply to issuance of permit and mandate as to its requirement. These provisions are Sections 42,44,54,55,56(2), 59, 60, 63, 70, 91 and Rule 118. Of these provisions, as there is an indication of national permit having been issued with regard to the vehicle involved in the incident, we will have to look to Section 63(2). It provides for granting of national permit and also specifies the authority that can grant the permit. In the Rules framed under said 1939 Act, Rule 81 deals with the national permit and the form prescribed for the purpose is form no.N.P.Puc. When one looks at Exh.128 it is obvious that it is not a permit in the said prescribed from under Rule 81. However, on going through the prescribed form in the first schedule to the Rules, one does not find any reference to carrying of persons along with the goods being owner or the employee of the owner of the goods. This is to be found only in Rule 118 as also in Public Carriers Permit Form P.Pu & C. Incidentally, it may be mentioned that this permit is not on record at all.

30. Again we come back to the aforesaid Rule 118 which lays down the provisions as to carriage of persons along with the goods. It begins with the words that no persons shall be carried in goods except for the provisions made which is to be found in the proviso immediately following the main sub-rule. For our

purpose, the persons so permitted are more than 7. Precisely, this very Rule has been interpreted by the Gujarat High Court in 2 Full Bench decisions i.e. Nathibai's case and Kamalaben's case. Except for the variation that the persons travelling with goods were below the prescribed limit of 7, there is hardly any difference to be found fact-wise between these two cases and the case in our hand.

31. As noted above, therefore, the controversy comes to this whether carrying of passenger in excess of 7 would allow the Company to successfully plead the defence of disclaimer on the ground that conditions of the policy has been violated. This violation is related to the permit and therefore, viewed from different angles, one has to face the aforesaid question.

32. The crucial question in our opinion is the last minute attempt on the part of the Insurance Company to get out of its liability under the policy. The policy Exh.28 reveals that extra premium of Rs.100/- has been recovered for additional liability which is shown to be unlimited so far as the personal injury is concerned and for owner's damage, i.e. property damage, it is raised upto the limit of Rs.1,50,000/-.

33. Drawing our attention to the Schedule to the Policy where details of recovery of premium under different heads are set out, L.A. Mr.Nanavati had submitted that of the 2 Sections for liability namely II (1)(i) and II (2(ii), recovery of premium is shown against latter only. However, in the schedule, so far as additional premium under these sub-heads are concerned, on the opposite column "Rs." indicating rupees is to be found, opposite to the bottom of these two Sections namely where on the left hand side of the aforesaid word Rs. is to be found reference to clause lII(1)(ii) is given. In our opinion, therefore, in connection with additional liability undertaken by the Company, premium is recovered in respect of both and is shown against the space provided for the purpose. When no separate space is provided for Sec.II (1)(ii) and space is provided after making reference to II (1((i) and II (1)(ii) with a specific indication as to the space for placing words "Rs." opposite to 2(1)(ii) and showing the recovery of additional premium of Rs.100/-, we have no hesitation in reading the document to mean that the Company has recovered additional premium for covering additional liability under both the heads. This we are doing keeping in mind the aforesaid judgments and reading the document as a whole.

34. Secondly, the aforesaid two Full Bench decisions of this Court require the Insurance Company to prove its defence of breach of Policy terms and conditions and envisages for the purpose the Insurance Company to produce the permit issued under Rule 80 which is referable to the aforesaid statutory provisions. As noted above, the said permit is not produced on record at all. In absence of the permit on record alleged breach of Rule 118 and the prescribed limit thereunder would become meaningless. The reason is that Rule 118 itself provides that there might be a permit allowing him number of people to be carried in a goods vehicle and for this purpose sub-Rule (3) can well be referred to, which reads as under:

> Notwithstanding anything contained in sub-rules (1) and (2) but subject to the provisions of sub-rules (4) and (5):
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> (a) for the purpose of celebrations in connection with the Reppublic Day or Independence day, the Regional Transport Oficer,
>
> (b) For the purpose of enabling a co-operative society or class of co-operative societies owning or hiring a goods vehicle to carry its members under its authority in such goods vehicle when used for the purpose of carrying goods of the society inthe ordinary course of its business, the Secretary of the State Transport Authority,
>
> (c) where it considers expedient in public interest in respect of vehicles owned or hired by it and in respect of other vehicles on such inescapable grounds of urgent nature to be specified in the order, the State Government,
>
> may by general or special order, permit goods vehicle to be used for the carriage of persons for the purpose aforesaid and subject to such conditions as may be specified in the order"

35. When we have found that the Policy is issued by the appellant Insurance Company with unlimited liability, the provisions of Section 95 and 96 as to limit of liability are not required to be gone into. For these very reasons, the judgments on the point namely 1982 SC 836, 27(1) GLR 463, AIR 199r5 SC 1113, 1989(2) ACJ 577

and AIR 1996 SC 1150 need not be discussed at length and they are listed here as they are cited at the bar.

36. As to the requirement of permit being there on the record, there are various decisions which were cited on behalf of the claimant by the learned Counsel Mr.M.D.Pandya appearing for L.A. Mr.M.R.Shah. Over and above the said Full Bench decisions. They are : 1984 ACJ 150, 1986 ACJ 500 and 1085 as also page 778 and 1987 ACJ 81.

37. An attempt was made on behalf of the Company to make out a case of purpose of the use of vehicle having been changed in breach of Rule 118. We have not accepted this argument at all, but to counter this, on behalf of the claimants, various decisions were cited indicating that breach of the Rule cannot be raised to the level of change of purpose. It cannot be permitted to object to the realm of change of purpose of use of vehicle. One of these decisions we have discussed at length which is 1986 ACJ 460 and the remaining decisions are 1971 ACJ 219 of Kerala High Court where overloading of the truck was found; 1977 ACJ 241 Karnataka and 1982 ACJ 380 where Rule ;264(2) was found to have been committed breach of. Rule 264 relates to driving of tractors on roads. The other decisions on the point cited are 1990 ACJ 539 Andhrapradesh and 1995 ACJ 86 Andhrapradesh with one more decision in the same volume at pages 796 of Himachal Pradesh.

38. It was submitted on behalf of the claimants that Rule 118 prescribes upper limits of persons, who can travel along with goods. There being no permit on record, it is not possible for anyone to say with any certainty as to what in fact, was the condition imposed with regard to this limit in the concerned permit. This is more valid in view of the aforesaid sub-rule (3) of Rule 118. In any case, according to the claimants, the liability of the Insurance Company is statutory and therefore, the Company cannot fall back upon the alleged breach of condition of permit as it would not amount to change of the purpose. In this connection, the decisions cited on behalf of the claimants were 1985 ACJ page 840 and in the same volume page 762 with relevant remarks at paragraphs 9 & 10, 1990 ACJ 928 paragraphs 4 & 25 being relevant and 26(2) GLR 880 para 3.

39. With regard to the interpretation of the policy, the aforesaid Skandia decision has been cited and on the same line is 1996 Supreme Today 557 where in case of a goods vehicle found to be carrying instead of 6 workmen,

9 workmen, relying on the aforesaid Skandia decision, the learned Judges of the Supreme Court held that the misuse of a vehicle is somewhat irregular but not so fundamental so as to put an end to the contract. The learned Judges have expressed themselves to the effect that exclusion term of the Insurance Policy must be read down so as to serve the main purpose of policy i.e.to indemnify the damage which, in that case, was to the vehicle.

40. Now, coming to the said document, which is referred to as National Permit, Exh.137, we have already noted that it is not in the prescribed form. In fact, on going through the document, we find that it is an intimation to the owner of the vehicle, a co-operative Society that the concerned authority has decided to issue a national permit provided the owner fulfills the conditions set out in the letter Exh.137.

41. No doubt, at Exh.136 there is a permit register which as per the deposition of the RTO Clerk Mr.Solanki Exh.134, is the register of national permit. This would mean that in fact, national permit was issued. However, it has to be accepted that neither the national permit nor the State permit has been produced on record.

42. The aforesaid full bench decisions clearly laid down that, the Insurance Company, in order to prove its defence, has to produce the policy on record, which it has failed to do.

43. The Insurance Company, however, is not precluded from proceeding against the insured in case it is required to meet with the liability of the award and according to its case, it is the owner, who is responsible in this situation that the Company is finding itself in. However, it may be pointed out here that according to Kamlaben's case, the breach of the policy condition or that of the permit should be to the knowledge of the owner of the vehicle and not a word in this regard is to be found from the record of the case and in our opinion, therefore, the efforts made by the learned Advocate for the Insurance Company to attack the judgment of the trial Court cannot succeed. The result

therefore is that the appeals fail. The appeals are dismissed with costs. The judgment of the trial Court is confirmed.

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44. After pronouncement of the judgment, L.A.

Mr.P.V.Nanavati, appearing for the appellant requests that the operation and implementation of the judgment and order be stayed for a period of 3 months to enable him to carry the matter to higher forum. The request is granted. The operation and implementation of this judgment is stayed for a period of 3 months from today.

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